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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: LUCENT DEATH BENEFITS ERISA LITIGATION	Master File No. 2:03-cv-5017 (WGB)
THIS DOCUMENT RELATES TO: All Actions	

CONSOLIDATED AMENDED COMPLAINT

Plaintiffs Edward Foss, Vincent R. Lucas, Arthur J. Berendt, Robert B. Howard and Sarah A. Conder, on behalf of themselves and all others similarly situated, allege as follows:

INTRODUCTION

1. Plaintiffs Edward Foss, Vincent R. Lucas, Arthur J. Berendt, Robert B. Howard, and Sarah A. Conder bring this class action to redress the unlawful termination, effective February 1, 2003, of the death benefits owed under the pension plan sponsored by defendant

Lucent Technologies Inc. ("Lucent") (and its predecessor, defendant AT&T Corp. ("AT&T")) and payable from plan assets to the qualified beneficiaries of retirees receiving "service pensions" under the plan. The death benefit that is the subject of this action (hereinafter referred to as the "Retiree Death Benefit"), was to be paid by the pension plan in the amount of one year's compensation to certain defined types of qualified beneficiaries of retired employees who were receiving service pensions, and was referred to in many of the operative plan documents as a "sickness death benefit."

2. Plaintiffs Foss, Lucas, Berendt and Howard were long-term employees of AT&T who retired from AT&T Management Pension Plan, as was plaintiff Conder's husband. As of the time of their retirements, plaintiffs Foss, Lucas, Berendt and Howard, like all members of the Class, had performed all acts necessary under the pension plan to be entitled to payment of these benefits. The only remaining condition for payment of these benefits was death (an inevitable event for each plaintiff and Class member) and the survival of one or more qualified beneficiaries to whom the Retiree Death Benefit is payable from plan assets. Survival of a beneficiary who is eligible to receive benefits is a typical provision for all pension benefits that are due following the death of the participant. Similarly, at the time of his retirement, plaintiff Sarah A. Conder's husband, Joseph B. Conder, had performed all acts necessary under the pension plan to be entitled to payment of these benefits. Following his death in 2004, plaintiff Conder would have been paid a Retiree Death Benefit but for the wrongful elimination of this benefit.

3. When ERISA was enacted in 1974, the AT&T Plan that then provided Retiree Death Benefits was entitled the Plan for Employees' Pensions, Disability Benefits and Death Benefits. This Plan was originally adopted in 1913.

4. Prior to the passage of ERISA, AT&T treated the Retiree Death Benefit as a

definitely determinable benefit payable out of Plan assets; AT&T funded Retiree Death Benefits on an actuarial basis (using mortality and interest assumptions), just as it did all other defined benefits payable under the Plan. After the enactment of ERISA, AT&T designated and treated Retiree Death Benefits as a "defined benefit" in Plan documents, Summary Plan Descriptions and Annual Returns; AT&T continued to fund Retiree Death Benefits on an actuarial basis (using mortality and interest assumptions), just as it did all other defined benefits payable under the Plan.

5. Prior to the enactment of ERISA, the Plan provided for Retiree Death Benefits to be payable even after the plan terminated, so long as there were sufficient assets in the pension trust fund. After the enactment of ERISA, AT&T specified, in Plan documents, that Retiree Death Benefits of retirees and those eligible for retirement were nonforfeitable and given a priority over other nonforfeitable benefits in the event of Plan termination.

6. AT&T also advised that employees who were planning for retirement and making personal elections about their post-retirement benefit options should consider the availability and amount of these Retiree Death Benefits in making their irrevocable retirement elections, including the election whether or not to have a joint and survivor pension to protect their surviving spouses.

7. In 1996, AT&T formed Lucent in a corporate reorganization. As a result of this business transaction, the named plaintiffs and thousands of other pension plan participants were involuntarily transferred from participation in AT&T's pension plan to a new pension plan at Lucent. Lucent agreed to establish mirror plans and to assume all of AT&T's benefit obligations to the transferees, including the obligation to pay the Retiree Death Benefit to the qualified beneficiaries of retirees receiving service pensions upon their deaths. Lucent created a successor

plan; the operative plan documents issued by Lucent included clauses providing that Retiree Death Benefits for retirees were nonforfeitable and given a priority over other nonforfeitable benefits in the event of plan termination.

8. In consideration for Lucent's assumption of the obligation to perform these benefit obligations, AT&T also transferred to Lucent assets to pay all of the benefits that the transferred AT&T participants had earned. The assets transferred were well in excess of the amounts needed to fund all of the benefit obligations of retirees and active employees which were being transferred to Lucent. Lucent would subsequently utilize these excess assets, commencing in 1999, to fund retiree health benefits under Sections 401(h) and 420 of the Internal Revenue Code. When it agreed in 1996 to assume the duty to perform these benefit obligations, Lucent also agreed to continue to fund the Retiree Death Benefit on an actuarial basis. Every year, from 1996 until recently, Lucent's actuaries reviewed the assets and liabilities of the pension plan to assure that it held sufficient assets to pay all promised pension benefits, including the Retiree Death Benefit.

9. Notwithstanding (a) the long history at AT&T and then Lucent of treating, describing, and funding the Retiree Death Benefits as a permanent and protected defined pension benefit, (b) Lucent's use of excess pension assets to fund retiree medical obligations, which resulted in vesting of all benefits under its pension plan, and (c) the provisions of federal law which otherwise protected the benefits from cutback or elimination, defendant Lucent purported to amend the pension plan to terminate the Retiree Death Benefits promised to plaintiffs and the members of the Class effective February 1, 2003.

10. ERISA bars a plan sponsor from eliminating nonforfeitable benefits from a defined benefit pension plan. Upon information and belief, AT&T has not eliminated the Retiree

Death Benefit to the qualified beneficiaries of its management retirees, which it continues to characterize as a nonforfeitable defined benefit.

11. When it announced its termination of the benefits, Lucent publicly admitted that this action enabled it to evade a benefit obligation with a present value in excess of $400 million and that eliminating the benefit would enable the company to avoid making any new contributions to the pension plan. As a result of this willful violation of the Plan and ERISA, since February 2003 many widows and other qualified beneficiaries, including those for whom no survivor's pension annuity was elected due to the availability of the Retiree Death Benefit, have been subjected to serious financial hardship and distress, and all other participants likewise have been forced to suffer great stress about the security of the retirement income for their survivors.

12. Having earned the Retiree Death Benefit through their long years of dedicated service to AT&T, plaintiffs Foss, Lucas, Berendt and Howard bring this class action to challenge Lucent's willful violation of its duties to pay the benefit under the terms of the pension plan and the strict requirements of ERISA, and plaintiff Conder joins in this action as a beneficiary to whom a Retiree Death Benefit would have been paid but for the wrongful acts alleged. Inasmuch as defendant AT&T was the entity that was originally obligated to perform the benefits obligations and was never relieved of that obligation by virtue of the transfer to Lucent, plaintiffs bring this action against AT&T as well.

JURISDICTION AND VENUE

13. This Complaint arises under Section 502(a) of ERISA, 29 U.S.C. § 1132(a). This Court has subject matter jurisdiction over this action under Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), and under 28 U.S.C. § 1331. In addition, declaratory and injunctive relief

are authorized by 28 U.S.C. §§ 2201 and 2202, respectively, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by ERISA Section 502(a), 29 U.S.C. § 1132(a).

14. Venue is proper in this district under Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), because the relevant pension plan is administered, in whole or part, in this district, the violations of law alleged in this action occurred in this district, and defendants do business and are found in this district. Venue is also proper in this district under 28 U.S.C. § 1391(b), because a substantial part of the events or omissions that give rise to plaintiffs' claims occurred in this district.

PARTIES

15. Plaintiff Edward Foss is a retired employee of the AT&T Information Systems unit of defendant AT&T Corp. Plaintiff Foss commenced his employment with AT&T on February 20, 1956. Following more than 29 years of dedicated service, he retired effective October 31, 1985 and began receiving service pension payments under the AT&T Management Pension Plan. As a consequence, he then became entitled to have a Retiree Death Benefit paid to his qualified beneficiaries. Plaintiff Foss is currently 77 years old, and he resides at 25 East Cheyenne Mountain Boulevard, Colorado Springs, Colorado 80906.

16. Plaintiff Vincent R. Lucas is a retired employee of the Western Electric unit of defendant AT&T Corp. Plaintiff Lucas commenced his employment with AT&T on August 29, 1960. Following more than 25 years of dedicated service, he retired effective December 1, 1985 and began receiving service pension payments under the AT&T Management Pension Plan. As a consequence, he then became entitled to have a Retiree Death Benefit paid to his qualified beneficiaries. Plaintiff Lucas is currently 82 years old, and he resides at 124 Hawthorne Court, Wyomissing, Pennsylvania 19610.

17. Plaintiff Arthur J. Berendt is a retired employee of defendant AT&T Corp.

Plaintiff Berendt commenced his employment with AT&T on October 27, 1947. Following more than 41 years of dedicated service, he retired effective March 1, 1989 and began receiving service pension payments under the AT&T Management Pension Plan. As a consequence, he then became entitled to have a Retiree Death Benefit paid to his qualified beneficiaries. Plaintiff Berendt is currently 78 years old, and he resides at 21333 Littlestone, Harper Woods, Michigan 48225.

18. Plaintiff Robert B. Howard is a retired employee of defendant AT&T Corp. Plaintiff Howard commenced his employment with AT&T on January 3, 1956. Following more than 28 years of dedicated service, he retired effective December 31, 1984, and began receiving service pension payments under the AT&T Management Pension Plan. As a consequence, he then became entitled to have a Retiree Death Benefit paid to his qualified beneficiaries. Plaintiff Howard is currently 74 years old, and he resides at 6 Woodland Avenue, Morris Township, NJ 07961.

19. Plaintiff Sarah A. Conder is the widow of Joseph B. Conder, who retired from AT&T in November 1985 with 38 years of service and began receiving service pension payments under the AT&T Management Pension Plan. Plaintiff Conder is a qualified beneficiary and is entitled to payment of the Retiree Death Benefit that was payable under the terms of the AT&T Management Pension Plan in place at the time he retired. Plaintiff Conder resides at 4314 Mount Vernon Road, Louisville, KY 40220.

20. Plaintiffs Foss, Lucas, Berendt and Howard are vested participants, within the meaning of Section 3(7) of ERISA, 29 U.S.C. § 1002(7), and currently are receiving a service pension from the successor plan which assumed the liability to pay their service pension and Retiree Death Benefits, i.e., defendant Lucent Retirement Income Plan. Plaintiff Conder is a

vested beneficiary, under Section 3(8) of ERISA, 29 U.S.C. § 1002(8).

21. Defendant Lucent Retirement Income Plan ("the Plan") is a defined benefit "employee pension benefit plan" within the meaning of Section 3(2)(A) of ERISA, 29 U.S.C. § 1002(2)(A). The purpose of the Plan is to provide retirement income to Plan participants and their beneficiaries. The Plan is the successor in interest to several pension plans sponsored by AT&T, including the AT&T Plan for Employees' Pensions, Disability Benefits and Death Benefits; the Bell System Management Pension Plan; and the AT&T Management Pension Plan (the plan under which each plaintiff retired). It also is the current version of the plan formerly known as the Lucent Technologies Inc. Management Pension Plan, which was effective as of October 1, 1996.

22. Defendant Lucent Technologies Inc. ("Lucent") is a Delaware corporation that has its principal place of business at 600 Mountain Avenue, Murray Hill, New Jersey 07974. Lucent is the "Administrator" of the Plan, within the meaning of ERISA Section 3(16)(A), 29 U.S.C. § 1002(16)(A), a "fiduciary" of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), and the "sponsor" of the Plan.

23. Defendant Lucent Technologies Inc. Employee Benefits Committee ("the Committee") is a committee whose members are appointed by Lucent and who are responsible for administration of the Plan, including the responsibility to pay the benefits payable under the Plan. The Committee is a "named fiduciary" of the Plan, within the meaning of ERISA Section 402(a), 29 U.S.C. § 1102(a), and each of its members is a "fiduciary" of the Plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A).

24. Defendant AT&T Corp. ("AT&T") is a New York corporation that has its principal place of business at One AT&T Way, Bedminster, New Jersey 07921. Until 1996,

AT&T was the "administrator," within the meaning of ERISA Section 3(16)(A), 29 U.S.C. § 1002(16)(A), a "fiduciary," within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), and the "sponsor" of the pension plan under which each plaintiff retired and which is the predecessor of the Plan. In 1996, AT&T acted to "spin-off" and transfer to Lucent assets and liabilities associated with the pension benefits, including the Retiree Death Benefits, owed to plaintiffs and the members of the Class. This transfer of assets and liabilities was implemented without the consent of plaintiffs and the members of the Class, and AT&T remains jointly liable with defendant Lucent for performance of the benefit obligations owed to plaintiffs and the members of the Class.

CLASS ACTION ALLEGATIONS

25. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Class and Sub-Class. The Class is defined as follows:

> All persons who are participants in the Lucent Retirement Income Plan who are receiving service pensions whose eligibility for Plan benefits is based upon a termination of employment date occurring on or before January 1, 1998, and who are entitled to payment of the Retiree Death Benefit from the assets of the Plan pursuant to the terms of the Lucent Retirement Income Plan as it existed before the Plan amendment which purported to eliminate the Retiree Death Benefit effective February 1, 2003, and all persons who are qualified beneficiaries of these participants, or of former participants who were receiving service pensions before their deaths, for purposes of payment of these Retiree Death Benefits from the assets of the Plan but who have not been paid the Retiree Death Benefits.

Included within the Class is a Sub-Class, known as the "AT&T Retiree Sub-Class," defined as follows:

> All persons who are participants in the Lucent Retirement Income Plan who are receiving service pensions whose eligibility for Plan benefits is based upon a pension commencement date occurring on or before October 1, 1996, and who are entitled to payment of the Retiree Death Benefit from the assets of the Plan pursuant to the terms of the Lucent Retirement Income Plan as it existed before the Plan amendment which purported to eliminate the Retiree Death Benefit

effective February 1, 2003, Retiree Death Benefit and all persons who are qualified beneficiaries of these participants, or of former participants who were receiving service pensions before their deaths, for purposes of payment of these Retiree Death Benefits from the assets of the Plan but who have not been paid the Retiree Death Benefits.

26. The members of the Class are so numerous that joinder of all Class members is impracticable. The exact number of Class members is currently unknown to plaintiffs. However, the Internal Revenue Service Form 5500 Annual Report for the Plan for calendar year 2003 reveals that as of January 1, 2003, there were approximately 50,000 retired participants who then were receiving benefits under the Plan, the great majority of whom retired on or before January 1, 1998. The AT&T Retiree Sub-Class comprises a very large portion of the Class and therefore is numerous as well. Accordingly, plaintiffs believe that the participant members of the Class exceed 30,000 in number and that the members of the Sub-Class make up the vast majority of this Class membership. Given the large number of Class and Sub-Class members and their geographical dispersion among many states, it is impracticable for all Class and Sub-Class members to join in individual litigation.

27. Common questions of law and fact exist as to all members of the Class and Sub-Class. Among the questions of law and fact common to the Class and Sub-Class are:

(a) Whether plaintiffs and the members of the Class and Sub-Class are eligible for and entitled upon their deaths to payment of the Retiree Death Benefit provided under the Plan to their qualified beneficiaries but for the purported amendment of the Plan effective February 1, 2003;

(b) Whether the Retiree Death Benefit became vested for each plaintiff and Class and Sub Class member not later than September 1999, when defendant Lucent first made a transfer of excess pension assets from the Plan, in which each plaintiff and Class member then was

a retired participant (or the beneficiary of such participant), to fund retiree medical benefits pursuant to IRC section 420;

(c) Whether the provisions of ERISA and/or the terms of the Plan or Summary Plan Descriptions prohibit defendants from reducing or eliminating the Retiree Death Benefit that was in force at the time of retirement of each plaintiff and Class and Sub-Class member;

(d) Whether defendants are otherwise barred from reducing or eliminating the Retiree Death Benefit that was in force at the time of retirement of each plaintiff and Class and Sub-Class member;

(e) Whether defendants violated ERISA when they purported to eliminate, and ceased to pay, the Retiree Death Benefits payable to the qualified beneficiaries of each plaintiff and Class and Sub Class member on account of deaths occurring on and after February 1, 2003; and

(f) Whether each plaintiff and Class and Sub-Class member is entitled to the relief prayed for in this Consolidated Amended Complaint.

28. Each plaintiff is a member of the Class and Sub-Class, and each plaintiff's claims are typical of the claims of the members of the Class and Sub-Class.

29. Plaintiffs will fairly and adequately protect the interests of the members of the Class and Sub-Class and have retained counsel who are competent and experienced in ERISA and class action litigation. Plaintiffs do not have interests that are antagonistic to, or in conflict with, the members of the Class and Sub-Class whom they seek to represent.

30. Class certification is appropriate under Rules 23(b)(1)(B) and (b)(2), Fed. R. Civ. P., because adjudications with respect to individual members of the Class or Sub-Class would as a practical matter be dispositive of the interests of other non-party members, and defendants have acted on grounds generally applicable to the Class or Sub-Class, making appropriate declaratory,

injunctive and other equitable relief on a class-wide basis.

31. If necessary, class certification also would be appropriate under Rule 23(b)(3), Fed. R. Civ. P., because the common issues of law and fact presented in this action predominate over any individual issues. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, the expense and burden of individual litigation makes it impractical for the members of the Class and Sub-Class to pursue individual litigation in order to vindicate their rights. Plaintiffs are not aware of any problems that would militate against the maintenance of this action as a class action.

FACTUAL BACKGROUND

A Brief History of the AT&T Plan

32. In 1913, AT&T adopted a pension plan that was the predecessor to all of the plans at issue here. Thereafter, effective January 1, 1927, AT&T established a trust fund from which pensions earned by its employees over the course of their service to the company would be paid. AT&T's pension plan came to be entitled the "Plan for Employees' Pensions Disability Benefits and Death Benefits," a name which it kept through the enactment of ERISA.

33. Effective October 1, 1980, the Plan for Employees' Pensions, Disability Benefits and Death Benefits was restated and renamed the Bell System Management Pension Plan. The Bell System Management Pension Plan carried forward many of the standard features that AT&T had developed under the Plan for Employees' Pensions, Disability Benefits and Death Benefits. AT&T established the Bell System Management Pension Plan and issued a Summary Plan Description dated October 1, 1980 and a plan document dated April 1, 1981, which was amended on October 1, 1982.

34. Effective January 1, 1984, the Bell System Management Pension Plan was restated and renamed the AT&T Management Pension Plan. This occurred as a result of the break-up of the Bell System under a judicial decree entered in antitrust litigation against AT&T brought by the U.S. Department of Justice. The AT&T Management Pension Plan was the result of a transaction in which similar plans were simultaneously spun off from the Bell System Management Pension Plant to the Regional Bell Operating Companies, or "Baby Bells." This spin-off required the transfer of assets to each separate plan sufficient to assure that participants would receive the same benefits if each plan terminated following the spin-off that they would have received in a termination prior to the spin-off. AT&T retained Milliman & Robertson to audit this transfer of assets.

35. The AT&T Management Pension Plan incorporated the standard features that AT&T had developed under the predecessor plans. AT&T established the AT&T Management Pension Plan and issued a Summary Plan Description dated January 1, 1984, and a plan document dated January 1, 1984, which was amended as of October 1, 1985.

Basic Features of the Retiree Death Benefit Prior to Passage of ERISA

36. In 1964, AT&T amended the existing plan document dated November 1, 1963 to provide for periodic funding of Retiree Death Benefits. AT&T also acted to provide additional protections for Retiree Death Benefits in the event of termination, adding a clause to the plan requiring that assets of the plan be applied to pay Retiree Death Benefits that would become payable after termination of the plan to the beneficiaries of retirees and employees eligible to retire at the time the plan terminated. This became a standard feature of the plan.

37. With these amendments in 1964, the form of the Retiree Death Benefits payable to the qualified beneficiaries of retirees receiving service pensions under the AT&T plan became

permanently established with the following basic features:

(a) The amount of the Retiree Death Benefit was definitely determinable and was defined as being equal to one year's compensation;

(b) Eligibility for the Retiree Death Benefit was tied to the participant's age and service that governed his/her eligibility for a service pension;

(c) Retiree Death Benefits were paid from the pension plan trust fund;

(d) Retiree Death Benefits were funded on an actuarial basis;

(e) Retiree Death Benefits were payable to spouses and other dependents;

(f) Retiree Death Benefits were payable either in interest-bearing installments or in a lump sum;

(g) Retiree Death Benefits were protected by a standard limitation on AT&T's power to amend the plan, which provided that any amendment "shall not affect the right of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder"; and

(h) Retiree Death Benefits were protected in the event the plan terminated by a requirement that plan assets be applied to pay for death benefits payable on deaths that would occur after termination of the plan.

38. During the years 1964 through 1975, AT&T amended the Plan for Employees' Pensions, Disability Benefits and Death Benefits on various occasions. But in each instance the plan preserved and continued the essential terms of the Retiree Death Benefit.

Basic Features of Retiree Death Benefit After the Enactment of ERISA

39. In 1974, Congress enacted ERISA, a comprehensive legislative scheme to govern private qualified benefit plans. The statute was generally effective January 1, 1975 under Section 111(b)(1) of ERISA, 29 U.S.C. § 1031(b)(1). Since that date, all of the plans at issue in this lawsuit have been required to comply with ERISA.

40. In 1976, AT&T amended the Plan for Employees' Pensions, Disability Benefits and Death Benefits to formally designate that certain beneficiaries of the Retiree Death Benefits

were "Mandatory Beneficiaries." These Mandatory Beneficiaries were the spouse of the retiree if living with him at the time of death, unmarried children under age 23, children over age 23 who were mentally or physically incapable of self-support, and dependent parents who either lived with the retiree or were living nearby in housing furnished by the retiree. This definition became a standard feature of the plan.

41. Under the 1976 amendment to the plan, if a retiree receiving a service pension was survived by a Mandatory Beneficiary, the payment of the death benefit from the assets of the plan was automatic. This became a standard feature of the plan. If the retiree had no Mandatory Beneficiaries, then the administrators of the plan had some discretion over whether to pay a death benefit and to whom. These discretionary payments were not paid from the pension trust fund. The 1976 amendment incorporated all of the other standard features of the plan that had governed the Retiree Death Benefit in prior years.

42. In 1979, AT&T amended the Plan for Employees' Pensions, Disability Benefits and Death Benefits to merge two existing pension funds and create a single pension fund from which service pensions, deferred vested pensions, related survivor annuities and Retiree Death Benefits were paid. In the 1979 plan document, AT&T again accepted an obligation to fund pension benefits and Retiree Death Benefits on an actuarial basis, agreeing to fund the Plan so that "there will be available in the Pension Fund amounts sufficient to provide for the service pensions, deferred vested pensions, payments to annuitants . . . and death benefits, payable from the Pension Fund under the Plan, in the amounts stated in the Plan." This funding obligation for Retiree Death Benefits continued to be a standard feature of the Plan at AT&T and Lucent.

43. ERISA required that each plan sponsor determine, in advance of any plan termination, the priority that would be assigned to each benefit otherwise payable under the plan.

The architecture of the legislative scheme under Section 4044 of ERISA, 29 U.S.C. § 1344, was to provide protection for nonforfeitable benefits ahead of forfeitable benefits. Accordingly, AT&T had to make a determination of which benefits were nonforfeitable under the Plan and categorize them in conformance with the priorities established under ERISA.

44. In compliance with ERISA, AT&T placed all benefits under the Plan into seven categories in the plan document to create a set of priorities for distribution of assets upon termination of the Plan. The highest priority was category one and the lowest priority was category seven. Category one included full payment of service pensions previously granted to retired employees and their lawful annuitants or those eligible for the same, deferred vested pensions for former employees annuitants on the pension roll or eligible for the same and the service pensions or survivor annuities for active employees who are retirement eligible. Category Two included payment for death benefits attributable to deaths occurring prior to termination and for payment of death benefits upon the future death of retired employees receiving service pensions or other employees who were eligible for retirement with a service pension at the time of termination. Categories Three, Four and Five, were for certain deferred vested benefits. Categories Six and Seven were for non-vested benefits.

45. The termination section of the plan document thus assigned a higher priority to the payment of Retiree Death Benefits following termination than payment of certain deferred vested pension benefits. This provision became a standard feature of the plan and it reflects unambiguous plan sponsor/settlor intent to treat Retiree Death Benefits as nonforfeitable when a participant retired or was eligible for retirement with a service pension.

46. Following the 1979 amendment to the Plan, the basic features of the Retiree Death Benefit remained relatively static through the formation of the Bell System Management Pension

Plan, the break up of the Bell System and the creation of the AT&T Management Pension Plan. Retiree Death Benefits were payable in the amount of one year's compensation, and eligibility was tied to the age and service requirements for a service pension. Retiree Death Benefits were funded on an actuarial basis and paid from the pension trust fund to spouses and other dependents who were Mandatory Beneficiaries, either in interest-bearing installments or in a lump sum. Retiree Death Benefits were deemed non-forfeitable and were payable even after termination of the plan. They were also protected by a standardized limitation on AT&T's ability to amend the plan, which provided that any amendment "shall not affect the right of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder."

47. AT&T restated and reissued the AT&T Management Pension Plan in a new plan document effective March 16, 1995; this was the last version of the AT&T Management Pension Plan prior to the spin-off of Lucent. Consistent with AT&T's historic practice of tying retirees' entitlement to benefits under the AT&T Management Pension Plan and its predecessors to the provisions in place at the time of termination of employment or retirement, Section 1 of the March 16, 1995 plan document provided as follows: "[f]or former Employees who terminated employment before January 1, 1989, the provisions of the AT&T Management Pension Plan in effect at termination of the former Employee's employment governs."

48. The March 16, 1995 plan document incorporated the standard features relating to the Retiree Death Benefit that had been developed under the predecessor plans. In order to comply with the requirements of Internal Revenue Code Sections 401(h) and 420, the March 16, 1995 AT&T Management Pension Plan added provisions dealing with post-retirement health benefits in Section 6. In doing so, AT&T expressly provided that post-retirement health benefits

"shall not constitute a portion of any Participant's 'accrued benefit' . . . ." In marked contrast, the death benefit provisions of the Plan did not characterize the Retiree Death Benefit as something separate and apart from the accrued/vested benefits under the AT&T Management Pension Plan.

AT&T's Disclosure Practices

49. Upon the enactment of ERISA, AT&T was required to conform its plan, which had already been in existence some 60 years, to the categories, disclosures, reporting, rights and obligations of ERISA. One of the disclosure obligations imposed by ERISA required plans to provide participants with summary plan descriptions ("SPDs") that are "written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the Plan."

50. In light of discovery to date, plaintiffs believe and therefore allege that the first post-ERISA SPD was issued by AT&T effective January 1, 1976. The 1976 SPD provides, in pertinent part: "A benefit equal to one year's pay at retirement will be paid to the qualified beneficiary of an employee who retires with a Service or Disability pension at any time on or after October 31, 1963." The 1976 SPD contains no disclosure of any kind reserving to the employer any right to amend or terminate the plan under any circumstances.

51. From recruitment through retirement, AT&T continually stressed the Retiree Death Benefit as a permanent and fixed part of an employee's entire compensation package. The Retiree Death Benefit was consistently portrayed by AT&T as a secure, highly valuable benefit upon which pensioners and their spouses could rely in formulating their financial plans for retirement, as that is what AT&T intended it to be. For example, the 1978 summary plan

description distributed to participants of the Plan for Employees' Pensions, Disability Benefits and Death Benefits at Bell Laboratories stated as follows:

> DEATH BENEFITS -Sections 4 and 7 of the Plan
>
> Death Benefits are designed to help protect your family financially in case of your death before or after retirement:
>
> . . . .
>
> Retiree Death Benefit
>
> . . . .
>
> A benefit equal to one year's pay at retirement will be paid to the qualified beneficiary on the death of an employee who retires with a Service or Disability Pension.

Similar disclosures appeared in the 1980 SPD issued for the Bell System Management Pension Plan, and the SPDs issued for the AT&T Management Pension Plan in 1984, 1988, 1992, and 1995.

52. After the enactment of ERISA, AT&T took the position that certain benefits under the subject Plan were part of a defined benefit pension plan and certain benefits were part of a welfare plan. Specifically, AT&T issued SPDs that included a provision entitled "Type of Plan." In this provision, participants were advised the Plan was both a defined benefit plan and welfare plan under ERISA. For example the January 1, 1978 SPD issued by Bell Labs provided, in pertinent part:

> **Type of Plan**
>
> The Plan is classified as both a pension plan and a welfare plan under the definitions of the Employee Retirement Income Security Act of 1974. It is a "defined benefit plan" for Service and Deferred Vested Pension purposes and for the payment of certain Sickness Death Benefits at the death of a Pension Plan participant. The Plan is a "welfare plan" for purposes of providing certain other death benefit payments and disability benefit payments.

The "sickness death benefits" described in this disclosure included Retiree Death Benefits. Similar disclosures appeared in the 1980 SPD for the Bell System Management Pension Plan, and the SPDs issued for the AT&T Management Pension Plan in 1984, 1988, 1992, and 1995. After Lucent was spun-off from AT&T in 1996, Lucent adopted similar disclosures in the SPDs it issued for its successor plans.

53. Starting in or about 1980, in recognition that the subject Plan comprised both a defined benefit plan and a welfare benefit plan, AT&T began assigning different plan numbers to the defined benefit plan and the welfare plans, and disclosed them in its SPDs. Thereafter, the SPDs issued by AT&T consistently advised participants that Plan #006 was assigned by AT&T for "pensions and certain death benefits paid from the Trust Fund," which included the Retiree Death Benefits at issue in this case, as they were payable from the trust that held the assets of the Plan. For example, the 1984 SPD indicated that the Plan was identified by the following numbers:

> #006- assigned by AT&T for pensions and certain death benefits paid from the Trust Fund
>
> #525-assigned by AT&T for disability pensions and certain other death benefits paid from a Participating Company's operating income
>
> #512-assigned by AT&T to the special accidental death policy underwritten by The Continental Insurance Company.

AT&T included similar disclosures in the SPDs that it issued for the AT&T Management Pension Plan in 1988, 1992, and 1995.

54. These Plan numbers were assigned to comply with existing regulatory requirements; the instructions for Form 5500, the Annual Return filed to report on employee

benefit plans, directed that all welfare plans use plan numbers commencing with 501 and all other plans use plan numbers commencing with 001.

55. In its SPDs, AT&T also informed participants that its power to amend the plan was restricted. For example, the 1980 SPD for the Bell System Management Pension Plan at page 2 provided that AT&T could make changes in the Plan, "but future changes will not affect the rights of any individual to any benefit or pension which he or she may have become previously entitled to receive." The 1984 SPD for the AT&T Management Pension Plan contained a similar disclosure.

56. In the 1980 SPD for the Bell System Management Pension Plan, AT&T assured the participants that benefits secured by the pension trust fund were safe, noting that if the plan were discontinued or contributions ceased, "Plan participants will receive full benefits computed as of the date of such termination or complete discontinuance, to the extent such benefits are then funded, in the order of priority specified in the Plan or by applicable law." Similar statements were made in SPDs issued for the AT&T Management Pension Plan in 1984, 1988, 1992, and 1995.

AT&T's Reporting for the Plan

57. One of the reporting obligations imposed by ERISA was the filing of Annual Returns (Form 5500s) with the government. *See* 29 U.S.C. § 1023. On the Annual Returns (Form 5500) filed by AT&T for Plan #006, the Retiree Death Benefits were characterized as a defined benefit and ratably accrued together with the other pension benefits of the Plan.

58. On or about October 19, 1995, AT&T filed the Annual Report on Form 5500 for the AT&T Management Pension Plan, plan no. 006, for plan year 1994 (the "1994 Form 5500"). The 1994 Form 5500 was the last Form 5500 report filed by AT&T for that plan prior to the effective date of the spin-off of Lucent, which was October 1, 1996. The 1994 Form 5500

indicated that it was a defined benefit pension plan and listed the code appropriate to a defined benefit pension plan.. Attached to the 1994 Form 5500 was a Schedule B (the "1994 Schedule B"), which contained actuarial data on the liabilities of the plan. The 1994 Schedule B included in the calculation of the plan's defined benefit pension liabilities an actuarial calculation of the amounts that would become payable as Retiree Death Benefits. The Schedule B treated the Retiree Death Benefits as vested defined benefit pension benefits.

59. Plaintiffs believe and therefore allege that the treatment of Retiree Death Benefits payable upon the deaths of retirees receiving service pensions as set forth in the 1994 Form 5500 was consistent with the manner that they had been treated in Form 5500 filings in prior years for Plan #006. Retiree Death Benefits were consistently treated as an element of a defined benefit pension plan that constituted a defined benefit pension liability for vested benefits to the extent that the death benefit would be payable to the qualified beneficiaries of a retiree receiving a service pension.

AT&T Consistently Treated the Retiree Death Benefit as a Nonforfeitable Defined Benefit

60. As noted above, AT&T consistently informed participants that the plan was a defined benefit pension plan for purposes of paying service pensions, deferred vested pensions and certain death benefits, including the Retiree Death Benefits payable out of plan assets to qualified beneficiaries of retirees receiving service pensions which are the subject of these actions.

61. AT&T consistently manifested an intention and recognition that the Retiree Death Benefits payable to the qualified beneficiaries of retirees who were receiving service pensions was an element of their pension, rather than a welfare benefit that it could terminate at will. It

did this in various ways, such as making disclosures in its Summary Plan Descriptions advising participants the Retiree Death Benefit was a defined benefit, funding the Retiree Death Benefit as a defined benefit on an actuarial basis; treating the Retiree Death Benefit as a defined benefit in Annual Returns filed with the federal government, paying the death benefit out of pension plan assets, permitting beneficiaries to receive it in interest-bearing installments, and providing that the obligation to pay Retiree Death Benefits would survive the plan's termination and have priority over other nonforfeitable benefits. AT&T's actuaries did so as well, including the Retiree Death Benefits in their calculation of the Plan's defined benefit pension liabilities, and including Retiree Death Benefits in the calculation of the plan's funding requirements and accrual rate. These steps by AT&T reflected its own recognition and its actuarial consultants' recognition that the Retiree Death Benefit payable out of the trust maintained by the AT&T Management Pension Plan and its predecessors to the qualified beneficiaries of retirees receiving service pensions was a defined benefit, not a welfare benefit.

62. As a defined benefit, these benefits were subject to the minimum vesting standards of Section 203 of ERISA, 29 U.S.C. § 1053. The named plaintiffs and proposed class consists of persons who retired with vested service pensions, so they necessarily would have satisfied the vesting requirements of the Retiree Death Benefit as well. AT&T's position that the Retiree Death Benefit was an element of the service pension also permeated their course of dealing with participants. For example, in December 1989, AT&T human resources personnel provided videotaped seminars to potential retirees and distributed the script to attendees; the script of the presentation quoted an authorized AT&T spokesman, John Driscoll, Division Manager, Corporate Benefit Administration, as follows:

The sickness death benefits coverage continues throughout retirement. This is a

> payment made to a qualified beneficiary upon the retiree's death. The benefit is equal to one year's pay at the time of retirement. *If there is a qualified beneficiary, it's an automatic payment that's part of the pension package.*

(Career Decision/Benefits Workshop Benefits Overview Script (Draft: October 26, 1989 FINAL) at 3 (emphasis supplied)).

63. At the same workshop, Kati Matthews, an AYCO financial consultant and certified financial planner whom AT&T had hired to advise its employees on retirement planning, advised attendees that in planning for retirement, they should consider the assets their survivors would have, such as "proceeds from life insurance, the *sickness death benefit,* and any investments that you may have." (Career Decision/Benefits Seminar Financial Planning Videotape Script at 5 (emphasis supplied)).

64. Similarly, a form letter was developed and used at AT&T and continued to be used at Lucent to respond to participant inquiries about the status and amount of their Retiree Death Benefits. The model language provided as follows: "The proceeds of the Company's Sickness Death Benefit, amounting to $ [amount] *will be paid* if you are survived by a qualified beneficiary under the provisions of the plan (such as your spouse living with you, or an unmarried dependent child under the age of 23)." (emphasis supplied). Plaintiff Foss received one of these form letters from AT&T, and plaintiff Conder's husband received one from AT&T as well.

65. Given the fact that AT&T had consistently treated the Retiree Death Benefits as an element of the service pension, as well as the standardized statements in the SPDs and plan documents that future changes would not affect any participant's rights to any "benefit or pension" which he had "previously become entitled to receive," many participants, including plaintiffs Foss and Lucas and plaintiff Conder's late husband, Joseph, elected a single life annuity

form of pension when they processed their retirements and declined the joint and survivor annuity protection for their surviving spouses. As a result of this irrevocable election, they intended and expected that upon their deaths, their surviving spouses would receive the Retiree Death Benefit in lieu of any further monthly benefits from the Plan.

AT&T Spins Off Lucent

66. Lucent was incorporated in Delaware on November 29, 1995 as NS-MPG. Lucent was formed following AT&T's announcement in September 1995 of its intention to create a separate company comprised of the AT&T systems and technology businesses and operations. On February 1, 1996, AT&T began executing its decision to separate Lucent into a stand-alone company by transferring assets and liabilities to it.

67. In February 1996, shortly after AT&T began executing its decision to separate Lucent into a stand-alone company, AT&T sent a form letter to plaintiffs and other participants in the AT&T Management Pension Plan describing its plans to spin-off pension and other benefit obligations as part of the transaction. This letter advised participants as follows:

> A team has been hard at work since September determining the best way to fairly divide AT&T's numerous pension and benefit plans for both active employees and retirees. *The team's objective throughout has been to complete the task in a way that protects the interests of employees and retirees, meets all legal and contractual requirements, and contributes to successfully launching two strong independent companies.*

(emphasis supplied). The same letter quoted a letter from the Milliman & Robertson actuarial firm indicating that AT&T's pension plans were "situated in the top tier of well-funded plans." In August, 1996, AT&T issued a form letter to plaintiffs and other participants in the AT&T Management Pension Plan who were to be transferred to Lucent. This letter advised participants that "at the time of the spin-off, Lucent Technologies will have more assets than legally required

to continue the pension benefits earned by current and former employees." Participants were told that "[t]he benefits earned at AT&T by AT&T and Lucent employees are protected by law, and both companies will receive sufficient assets to meet their corresponding liabilities."

68. Lucent was spun-off from AT&T effective as of October 1, 1996. At the time that Lucent was spun-off from AT&T, the value of the assets held for the benefit of the AT&T Management Pension Plan exceeded its liabilities by a substantial amount. The ability of AT&T to transfer, and of Lucent to assume, pension assets and liabilities from the AT&T Management Pension Plan was governed by Section 208 of ERISA, 29 U.S.C. § 1058, which requires that each participant be assured of a benefit after the transfer that is not less than the benefit he/she would have received if the transferring plan had terminated immediately before the transfer. The same provision had also regulated the allocation when pension assets and liabilities were spun-off from the Bell System Management Pension Plan to the Baby Bells in 1984.

69. As of the date of the Lucent spin-off, plaintiffs Foss, Lucas, Berendt and Howard, and Joseph B. Conder were receiving a service pension under the AT&T Management Pension Plan, and each of them and each member of the Class was entitled to have a Retiree Death Benefit paid upon his death to his qualified surviving beneficiary. Under the termination provisions of the AT&T Management Pension Plan and predecessor plans, AT&T had already determined that Retiree Death Benefits of retirees and those eligible for retirement were nonforfeitable and given priority over other nonforfeitable benefits in the event of plan termination. Thus, had the Plan been terminated before the effective date of the spin-off and transfer of pension liabilities to Lucent, plaintiffs Foss, Lucas, Berendt and Howard, along with Joseph B. Conder, would have been entitled, under the termination provisions of the plan, to have AT&T "make provision" for the payment of Retiree Death Benefits if they were survived by

a qualified beneficiary and the Plan held (as it in fact did) sufficient assets at that time to fund Retiree Death Benefits for all retirees then receiving service pensions.

70. In connection with the spin-off of Lucent, AT&T and Lucent entered into an agreement, known as the "Employee Benefits Agreement," dated as of February 1, 1996, which was thereafter amended as of March 29, 1996. Under the Employee Benefits Agreement, AT&T delegated the duty to pay the benefits owed to plaintiffs and the members of the Class, and Lucent "assumed and agreed to pay, perform, fulfill and discharge, in accordance with their respective terms, all Liabilities (as defined), to or relating to former employees of AT&T or its affiliates employed by [Lucent] and its affiliates and certain former employees of AT&T or its affiliates (including retirees) who either were employed in the Company Business (as defined) or who otherwise are assigned to [Lucent] for purposes of allocating employees benefit obligations (including all retirees of Bell Labs)." Plaintiffs and the members of the Class did not consent to this assignment of defendant AT&T's benefits obligations.

71. Lucent was obligated under the terms of the Employee Benefits Agreement to establish plans that incorporated or "mirrored" the terms of the corresponding AT&T plans and to provide all transferring participants, including retirees such as plaintiffs Foss, Lucas, Berendt and Howard, full credit for all benefits they had earned through their years of service prior to the spin-off. In return for accepting this obligation, Lucent received an allocation of assets from the AT&T Management Pension Plan that exceeded the actuarial present value of the liabilities it accepted.

72. The Employee Benefits Agreement explicitly provided that Lucent's receipt of assets from the AT&T Management Pension Plan was conditioned upon its assumption of all of the AT&T Management Plan's liabilities: "the provision of this Agreement for the transfer of

assets from certain trusts relating to AT&T [Pension] Plans (including Foreign Plans) to the corresponding trusts relating to Lucent [Pension] Plans (including Foreign Plans) are based upon the understanding of the parties that each such Lucent Plan will assume all Liabilities of the corresponding AT&T Plan to or relating to Transferred Individuals, as provided for herein." The Employee Benefits Agreement further provided that, to the extent liabilities were not effectively assumed by Lucent, the amount of assets transferred to it would be recalculated and an appropriate amount of assets transferred back to AT&T's pension trust

73. The liabilities that Lucent assumed and agreed to perform under the Employee Benefits Agreement included the liabilities of the AT&T Management Pension Plan to pay the Retiree Death Benefit to qualified beneficiaries of participants who were retired and were receiving a service pension.

74. AT&T remains fully liable to perform these benefit obligations with respect to plaintiffs and the members of the Sub-Class who retired before the implementation of the Lucent spin-off effective October 1, 1996. Accordingly, defendant AT&T is sued herein as an original obligor of the promised Retiree Death Benefits.

Lucent's Management Pension Plan

75. Effective October 1, 1996, Lucent established The Lucent Technologies Inc. Management Pension Plan (the "Lucent Management Pension Plan"). The Lucent Management Pension Plan was the vehicle for Lucent to perform the obligations it assumed under the Employee Benefits Agreement to pay AT&T's pension benefit liabilities to plaintiffs and the members of the Class, based upon their service through September 30, 1996.

76. Consistent with AT&T's historic practice of tying a retiree's entitlement to benefits under the AT&T Management Pension Plan (and its predecessor plans) to the provisions

of the plan document in place at the time of retirement, the October 1, 1996 plan document for the Lucent Management Pension Plan provided in Section 1 that "for Transferred Individuals who Terminate Employment before October 1, 1996, the provisions of the AT&T Management Pension Plan in effect at termination of the Transferred Individual's employment as incorporated in the Prior Plan shall govern." This became a standard feature of the Plan as promulgated at Lucent.

77. The plan document for the 1996 Lucent Management Pension Plan also incorporated the standard features relating to the Retiree Death Benefit that had been developed under the predecessor AT&T plans, including the funding obligation, the termination provisions, the installment provisions, and the standard limitation on the employer's ability to amend or terminate the plan. The 1996 plan document also incorporated in full in Section 6 the provisions of the predecessor AT&T plan dealing with transfers of pension assets under IRC Sections 401(h) and 420 to fund post-retirement health benefits, which were copied from the March 1995 plan document for the AT&T Management Pension Plan. In doing so, Lucent adopted provisions that post-retirement health benefits "shall not constitute a portion of any Participant's 'accrued benefit' . . . [under the pension plan]." In marked contrast to those provisions, the death benefit provisions of the Lucent Management Pension Plan did not purport to characterize the death benefit as anything other than an accrued/vested pension benefit.

78. Lucent also issued an SPD to explain the terms of its plan. The October 1, 1996 SPD described the Retiree Death Benefit as follows:

> Under the death benefit provisions, your mandatory beneficiary will receive:
>
> - *A sickness death benefit* equal to one year's pay, if you die as a result of an illness or off-the-job accident while you are an active employee or

while you are receiving a service or disability pension . . . .

79. The October 1, 1996 SPD also contained the standardized disclosure that it was summarizing benefits under the defined benefit pension plan which would be the source of service pensions, deferred vested pensions, and Retiree Death Benefits payable to mandatory beneficiaries of retirees receiving service pensions, and under a "welfare plan" which would be the source of disability pensions and certain other death benefit payments. The October 1996 SPD included multiple plan numbers for the defined benefit and welfare benefit plans, just as AT&T had in its SPDs. The Plan number used for the Retiree Death Benefits, service pensions and deferred vested pensions (the defined benefit plan) at Lucent was #001. Similar disclosures were made by Lucent in SPDs issued in 1999 and 2001.

80. In the October 1996 SPD, Lucent assured participants that their benefits payable from the pension trust were safe: "If the Plan were terminated, the rights of all affected participants and beneficiaries to pension benefits computed as of the date of termination would become nonforfeitable to the extent that there are sufficient assets the pension trust fund to cover those benefits."

81. In 1997, the Company amended the Lucent Management Pension Plan to eliminate the Retiree Death Benefit only for future retirees, but preserving the Retiree Death Benefit for all other participants. The revised plan document stated that that, effective as of January 1, 1998, the Retiree Death Benefit was being eliminated for management employees who terminated employment after January 1, 1998. Eliminating the Retiree Death Benefit on a prospective basis was consistent with AT&T's historic treatment of the death benefit as vested if the benefit was payable to qualified beneficiaries of retirees who were receiving service pensions. Plaintiffs believe and therefore allege that AT&T has only eliminated the Retiree Death Benefit

for management retirees on a prospective basis, as Lucent did in 1997, and further allege that AT&T continues to pay Retiree Death Benefits to the qualified beneficiaries of its management retirees.

82. Consistent with AT&T's historic practice of tying retirees' entitlement to benefits to the plan provisions in place at the time of retirement, Lucent's amended plan document, effective as of January 1, 1998, included the standard provision in Section 1 directing that the rights of retirees who had terminated their employment before October 1, 1996 were governed by the provisions of the plan that were in place when they retired. The January 1, 1998 plan document incorporated the standard features relating to the Retiree Death Benefit payable to qualified beneficiaries of retirees receiving service pensions that had been developed under the predecessor plans, including the funding obligation, the termination provisions, and the installment provisions. It also included the standard provision that amendments or termination of the plan "shall not affect the rights of any Employee, without his or her consent, to any benefit or pension to which he or she may have previously become entitled hereunder." The January 1, 1998 plan document also included the same provisions dealing with Postretirement Health Benefits in Section 6 that had appeared in the 1996 plan document.

83. Effective January 1, 2000, the Lucent Management Plan was restated and renamed the Lucent Retirement Income Plan in conjunction with a shift from a traditional defined benefit plan to a "cash balance" plan structure. The Lucent Retirement Income Plan included the standard provision in Section 1 directing that the rights of retirees who had terminated their employment before October 1, 1996 were governed by the provisions of the plan that were in place when they retired. The plan document also incorporated standard features relating to the Retiree Death Benefit that had been developed under the predecessor plans in light of the fact

that such benefits would still be payable to the qualified beneficiaries of those who had terminated employment on or before January 1, 1998. It also included the standard provision that amendments to or termination of the plan "shall not affect the rights of any Employee, without his or her consent, to any benefit or pension to which he or she may have previously become entitled hereunder."

Lucent's Reporting for the Plan

84. Inasmuch as the Lucent Management Pension Plan incorporated many of the standard provisions of the AT&T Management Pension Plan and its predecessors, Lucent's reporting practices were similar to AT&T's. For example, on or about October 17, 1997, Lucent filed the Annual Report on Form 5500 for the Lucent Management Pension Plan, plan no. 001, for plan year 1996 (the "1996 Form 5500"). The 1996 Form 5500 was the first Form 5500 report filed by the plan after the spin-off of Lucent from AT&T. The 1996 Schedule B incorporated in the calculation of the plan's pension benefit liabilities an actuarial calculation of the value of the defined benefits that would become payable as Retiree Death Benefits to qualified beneficiaries upon the deaths of retirees who were receiving service pensions.

85. Plaintiffs believe and therefore allege that for each subsequent plan year through and including plan year 2003, Lucent filed a Form 5500 for plan number 001 which (a) designated the plan as a defined benefit pension plan; and (b) included Retiree Death Benefits payable to the qualified beneficiaries of service pension retirees in the actuarial calculation of the pension liabilities and funding requirements of the plan. Plaintiffs believe and therefore allege that Lucent filed separate Form 5500s for the welfare plans providing other benefits to retirees, such as disability pensions.

Until the Violations Complained of, Lucent Consistently Treated the Retiree Death Benefit as a Nonforfeitable Defined Benefit

86. Inasmuch as Lucent was required to establish a "mirror" plan to the AT&T Management Pension Plan and its predecessors, Lucent also administered the plan in a manner that was consistent with AT&T's past practice. Mirroring AT&T's past practice, Lucent consistently manifested its intent to treat the Retiree Death Benefit payable to the qualified beneficiaries of retirees with service pensions as an element of their pension, rather than as a welfare benefit that it could terminate at will. Lucent demonstrated its intent in various ways, such as making the aforementioned disclosures in the Summary Plan Descriptions advising participants that the Retiree Death Benefit was a defined benefit, funding the Retiree Death Benefit as a defined benefit on an actuarial basis; treating the Retiree Death Benefit as a defined benefit in Annual Returns filed with the government, paying it out Retiree Death Benefit amounts out of defined benefit plan assets, permitting beneficiaries to receive it in interest-bearing installments, and providing that the obligation to pay Retiree Death Benefits would survive the plan's termination and have priority over other nonforfeitable benefits. Lucent's actuaries did so as well by, *inter alia*, including the Retiree Death Benefits in their calculation of the plan's accrued/vested pension liabilities, and including the Retiree Death Benefits in the calculation of the plan's funding requirements and accrual rate.

87. Lucent also disseminated routine communications that assured plan participants that they were categorically entitled to have a death benefit paid to their qualified beneficiaries if they died while receiving a service pension, many of which communications were identical to those disseminated by AT&T during its administration of the predecessor plans. For example, Lucent sent plaintiff Conder's late husband, Joseph B. Conder, a form letter explaining his

entitlement to the Retiree Death Benefit, which stated that the Retiree Death Benefit "will be paid" if a participant was survived by a qualified beneficiary. Plaintiffs believe and therefore allege that the foregoing language explaining the Retiree Death Benefit was standardized and was routinely used in form letters sent by both Lucent and AT&T to retirees who inquired about Retiree Death Benefits.

Lucent's Transfers of Excess Pension Assets to Fund Retiree Medical Benefits

88. Both the AT&T Management Pension Plan and the Lucent Management Pension Plan/Retirement Income Plan historically held assets that exceeded their liabilities by a substantial amount. Beginning in 1999, defendant Lucent acted to take advantage of the provisions of Sections 401(h) and 420 of the Internal Revenue Code, 26 U.S.C. §§ 401(h), 420, which enable sponsors of defined benefit pension plans, under certain strictly defined circumstances, to make a "qualified transfer" and use certain "excess assets" in the pension plan to fund retiree medical benefits for persons who are retired participants in the same pension plan.

89. Among the conditions and limitations imposed by Sections 401(h) and 420 of the Internal Revenue Code are the requirements that pension plan assets may be subject to such a transfer and use only if, *inter alia*, the then existing funding level of the plan exceeds, and the funding level thereafter will remain in excess of, 125% of full funding as defined by the Code. Another mandatory requirement of these provisions, set forth in 26 U.S.C. § 420(c)(2), is that the pension benefits of all participants and beneficiaries which were accrued under the plan before the date of transfer must become vested and nonforfeitable, just as they would in the event that the plan had terminated immediately before the transfer.

90. Defendant Lucent made several Section 420 transfers of pension assets in the Lucent Management Pension Plan/Retirement Income Plan as follows: in September 1999 and in

December 1999, totaling $374,162,000; in December 2000 in the amount of $214,000,000; and in December 2001 in the amount of $300,000,000. In conformity with the requirements of Section 420, Lucent's Plan included provisions that vested all benefits under the pension plan that had been accrued as of the date of each of these transfers.

Lucent's Wrongful Elimination of the Death Benefit

91. Although Lucent had agreed to fund the Retiree Death Benefits on an actuarial basis, it went many years without having to make a contribution to the pension trust fund, because the value of the assets that AT&T transferred from the AT&T Management Pension Plan was substantially in excess of the pension liabilities that Lucent assumed. By late 2002, however, Lucent faced the prospect of having to make a mandatory contribution to the Lucent Retirement Income Plan in order to satisfy statutory minimum funding requirements for its pension obligations.

92. On or about December 12, 2002, Lucent filed its Annual Report on Form 10-K (the "2002 10-K") with the SEC. The 2002 10-K indicated that Lucent faced a future need to contribute to the Plan. Lucent never made a contribution, however. Lucent instead decided to evade its funding obligations to the Plan by purporting to eliminate the Retiree Death Benefit – despite its protected status under the provisions of ERISA and the terms of the Plan itself. Lucent thus decided to balance its budget on the backs of the widows (such as plaintiff Conder) and other dependents of retirees such as plaintiffs Foss, Lucas, Berendt and Howard and the members of the Class.

93. On or about January 2, 2003, Lucent sent a letter signed by Pamela O. Kimmet, Lucent's Senior Vice President of Human Resources, to every retiree indicating that it was eliminating the Retiree Death Benefit. The letter to retirees enclosed a set of questions and

answers, which indicated, among other things, that by eliminating the death benefit, Lucent would be able to avoid or limit its pension plan funding obligations. Specifically, the company indicated that it would "conserve approximately $35 million in pension assets annually, for a number of years, and reduce the present value of our management pension plan's funding obligation by about $400 million. Most important, the elimination of the death benefit reduces the likelihood that we would have to make a contribution to the plan in the near future."

94. This letter also made the unqualified, false statement that the Retiree Death Benefit was an "ancillary benefit" provided at the discretion of the company, and also falsely stated that the company was free to terminate the Retiree Death Benefit for former AT&T retirees who were assigned to Lucent. In fact, the Retiree Death Benefit was a defined benefit pension benefit, not an "ancillary benefit" such as a disability benefit or a pre-retirement death benefit. The Plan documents and historic conduct of both AT&T and Lucent and their respective actuaries was consistent with the fact that the Retiree Death Benefit was a defined pension benefit.

95. The amendment to the Lucent Retirement Income Plan purporting to eliminate the Retiree Death Benefit went into effect as of February 1, 2003. This amendment (the "Plan Amendment") provided in relevant part as follows:

> 1. Article V of the Plan as amended and restated as of January 1, 1998, entitled "Death Benefits," is hereby deleted in its entirety with respect to retirees who die on or [sic – word "after" omitted] February 1, 2003.
>
> 2. Any provision of any predecessor or prior version of the Plan that may have provided or authorized the payment of a death benefit upon the death of a retiree who retired before January 1, 1998 is hereby deleted in its entirety with respect to retirees who die on or after February 1, 2003.

96. The Plan Amendment also purported to alter the duties of the Plan trustees by eliminating their responsibility to pay Retiree Death Benefits; it amended the sections of the Plan governing the pension funding policy and method to eliminate references to the obligation of Lucent to provide sufficient funds to pay Retiree Death Benefits; and it revised the provisions of the Plan governing payments on termination or partial termination to eliminate the obligation to fund Retiree Death Benefits upon termination or partial termination.

Plaintiffs Have Exhausted the Remedies Provided by the Plan

97. Shortly after he was notified that Lucent had adopted the Plan Amendment and eliminated the Retiree Death Benefit, on January 6, 2003, plaintiff Foss directed a letter to Pamela O. Kimmet, a Senior Vice President at Lucent who is a member of the defendant Committee, protesting the elimination of the Retiree Death Benefit. On or about May 19, 2003, Ms. Kimmet sent plaintiff Foss a form letter in response to his January 6 letter.

98. Shortly after he was notified that Lucent had adopted the Plan Amendment and eliminated the Retiree Death Benefit, plaintiff Lucas had his son, Vincent C. Lucas, CPA, write a letter to Lucent protesting the purported elimination of the Retiree Death Benefit. In response, plaintiff Lucas received a form letter from Lucent, signed by Ms. Kimmet and dated May 12, 2003.

99. Shortly after he was notified that Lucent had adopted the Plan Amendment and eliminated the Retiree Death Benefit, on January 7, 2003, plaintiff Berendt directed a letter to Pamela O. Kimmet, protesting the elimination of the Retiree Death Benefit. In response, on March 11, 2003, Ms. Kimmet sent plaintiff Berendt a form letter.

100. Shortly after he was notified that Lucent had adopted the Plan Amendment and eliminated the Retiree Death Benefit, on February 4, 2003, plaintiff Howard directed a letter to

Patricia F. Russo, the Chief Executive Officer of Lucent, protesting the elimination of the Retiree Death Benefit. In response, on April 17, 2003, Pamela O. Kimmet sent a form letter to plaintiff Howard.

101. Shortly after he was notified that Lucent had adopted the Plan Amendment and eliminated the Retiree Death Benefit, on February 7, 2003, plaintiff Conder's husband Joseph sent a letter to Patricia F. Russo, the Chief Executive Officer of Lucent, protesting the elimination of the Retiree Death Benefit. In response, Pamela O. Kimmet sent a form letter to Mr. Conder. Thereafter, following her husband's death, plaintiff Conder sent a letter requesting payment of the Retiree Death Benefit, to which she received no response.

102. The letters that Ms. Kimmet sent to plaintiffs Foss, Lucas, Berendt and Howard and to Joseph B. Conder were identical. In fact, Ms. Kimmet apparently used a form letter that was sent to anyone who protested the elimination of the death benefit. Each letter represented that the decision to eliminate Retiree Death Benefits was the product of "long and careful deliberation."

103. Ms. Kimmet's letters to plaintiffs Foss, Lucas, Berendt and Howard and to Joseph B. Conder offered no substantive reason for the elimination of the Retiree Death Benefit beyond noting the cost savings Lucent would enjoy if it could avoid contributing to the Lucent Retirement Income Plan. The letters also failed to reference any pertinent plan provision authorizing the elimination of the Retiree Death Benefit; failed to describe any additional material or information that might be necessary to perfect a claim; and failed to provide appropriate information as to the steps to be taken if any of them wished to submit a claim for further review.

104. Assuming that any such requirement even applied to any of their claims, plaintiffs have either exhausted their administrative remedies under the Lucent Retirement Income Plan, or, in the alternative, there were no such remedies available to them in light of the purported amendment of the Plan and further resort to such remedies is excused for the following reasons:

(a) Lucent and the Committee have made an across the board determination "after long and careful deliberation" that Retiree Death Benefits will not be paid any longer;

(b) the Lucent Retirement Income Plan has formally been amended to eliminate the provision for the Retiree Death Benefit; as a consequence, Lucent and the Committee could not authorize the payment of a Retiree Death Benefit without contravening the specific terms of the Lucent Retirement Income Plan, which action could not be taken in response to a participant claim for benefits in any event;

(c) the Plan Amendment eliminated the authority of the Plan trustees to pay Retiree Death Benefits out of Plan assets; and

(d) Plaintiffs' statutory claims under ERISA and their federal common law claims are not subject to an exhaustion requirement.

105. Based upon the foregoing, plaintiffs' current invocation of the judicial process is reasonable under the totality of the circumstances.

COUNT ONE

VIOLATION OF ERISA AND PLAN PROVISIONS RELATING TO VESTING OF BENEFITS UPON TRANSFER OF PENSION PLAN ASSETS TO FUND RETIREE MEDICAL BENEFITS, UNLAWFUL INUREMENT OF PLAN ASSETS, AND PROHIBITED TRANSACTIONS

106. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 105. This Count is brought on behalf of all members of the Class against Lucent, the Plan and the

Committee.

107. Under the provisions of the Lucent Management Pension Plan and the Lucent Retirement Income Plan, and by virtue of the operation of 26 U.S.C. § 420(c)(2), which was expressly incorporated in the plan documents, effective beginning as of the time of the first transfer of excess pension assets by Lucent on or about September 30, 1999, each plaintiff and each Class member became fully vested in the Retiree Death Benefit provisions of the Plan as of the time of each of those transfers, the last of which occurred in December 2001. (This claim is made without prejudice to plaintiffs' other claims that the Retiree Death Benefit was vested and non-forfeitable at earlier times for other reasons). Any action by a defendant which is inconsistent with the fully vested nature of the Retiree Death Benefit constitutes a violation of 26 U.S.C. § 420, the terms of which are expressly incorporated in the Plan, as well as a violation of the plan provisions which expressly provided for the full vesting of all benefits under the pension plan which were accrued as of the time of each transfer of pension assets. Defendants' violation of these statutory and plan provisions also constitutes (1) an unlawful inurement of Plan assets to defendant Lucent in violation of ERISA Section 403(c)(1), 29 U.S.C. § 1103(c)(1), and (2) an unlawful prohibited transaction by defendants Lucent and the Committee in violation of ERISA Section 406(a), (b), 29 U.S.C. § 1106(a), (b).

108. In addition, Lucent and the Committee violated the strict fiduciary duties applicable under ERISA Section 404(a), 29 U.S.C. § 1104(a), to the extent they either failed to preserve, and failed to protect from sponsor elimination, the Retiree Death Benefit as a vested benefit and/or treated the Retiree Death Benefit as terminable, or acted to facilitate and implement Plan provisions that contravened these requirements. In addition, the plan documents for the Plan and the predecessor plans are the "documents and instruments," of the Plan, within

the meaning of Section 404(a)(1)(D) of ERISA, 29 U.S.C. § 1104(a)(1)(D), which govern the benefits to be provided by the Plan. The failure to provide the benefits set forth in the Plan in conformity with the Plan provisions implementing 26 U.S.C. § 420(c)(2) constitutes a breach of the strict fiduciary duty to follow the terms of the Plan documents. Each fiduciary defendant is personally liable for all losses resulting from these breaches of duty.

109. Plaintiffs are collectively entitled to enforce their rights under ERISA and the terms of the Plan, or clarify their rights to future benefits under the Plan, under ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132 (a)(1)(B), and to secure other relief under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), as may be necessary and appropriate to fully and effectively redress these violations. The same sections of ERISA are a basis for necessary monetary, declaratory and equitable relief to fully remedy each of these violations.

COUNT TWO

VIOLATION OF ERISA AND PLAN PROVISIONS RELATING TO VESTED NATURE OF RETIREE DEATH BENEFITS

110. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 105. This Count is brought on behalf of all members of the AT&T Retiree Sub-Class against all defendants.

111. In addition to and as an alternative to the basis for liability presented in the foregoing Count, under the provisions of the Plan documents and instruments governing the Plan and their predecessors, each plaintiff and each Sub-Class member, became vested in the Retiree Death Benefit as a defined pension benefit in accordance with the vesting schedule established under the minimum vesting standards of ERISA found in ERISA Section 203, 29 U.S.C. § 1053.

112. In addition to and as an alternative to the basis for liability pled heretofore, the

provisions of the Plan documents and instruments governing the Plan and their predecessors, including but not limited to, the provision entitled Pension Plan Termination Arrangements, constitute express settlor intent that Retiree Death Benefits for each plaintiff and each Sub-Class member became vested in the payment of the Retiree Death Benefit upon their retirement.

113. In addition to and as an alternative to the basis for liability pled heretofore, the act of service and retirement by each plaintiff and each Sub-Class member constituted an acceptance by conduct of the promise to pay the Retiree Death Benefit, which acceptance likewise made the Retiree Death Benefit a vested and irrevocable benefit entitlement.

114. None of the plan documents for the Plan and the predecessor plans purported to reserve the right to modify or eliminate the stated form or amount of the Retiree Death Benefit after an employee retired and became entitled to have the Retiree Death Benefit paid to his qualified beneficiaries upon death. Rather, the contrary was stated and confirmed. Plan documents expressly provided, without qualification, that "any benefit or pension" under the plan to which a participant had become entitled (which necessarily included the Retiree Death Benefit) could not be changed or terminated without consent of the participant: "[C]hanges or termination shall not affect the rights of any employee, without his consent, to any benefit or pension to which he may have previously become entitled hereunder." Neither AT&T nor Lucent can legally eliminate nonforfeitable benefits under a defined benefit pension plan.

115. Plaintiffs and the members of the AT&T Retiree Sub-Class have not consented and do not consent to the termination of the Retiree Death Benefit.

116. The termination of the Retiree Death Benefit is a violation of the terms of the Plan which is actionable under Section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). Plaintiffs and the members of the Sub-Class are entitled to a declaration of their right to future benefits

under the Plan, and members of the Sub-Class who are qualified beneficiaries of Sub-Class members who died on or after February 1, 2003 are entitled to immediate payment of the Retiree Death Benefit. Further, under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), plaintiffs and the members of the Sub-Class are entitled to declaratory, injunctive or other equitable relief necessary and appropriate to fully and effectively redress these violations.

117. In addition, each defendant (other than AT&T) has violated the strict fiduciary duties applicable to it under ERISA Section 404(a), 29 U.S.C. § 1104(a). The plan documents for the Plan and the predecessor plans are the "documents and instruments" of the Plan which govern its benefits, within the meaning of Section 404(a)(1)(D) of ERISA, 29 U.S.C. § 1104(a)(1)(D). The amendment purporting to eliminate the Retiree Death Benefit is invalid as it conflicts with the aforementioned Plan provisions. The actions of each defendant (other than AT&T) in acting to implement actions to eliminate or deny the Retiree Death Benefit therefore are actionable under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), to secure relief necessary and appropriate to fully and effectively redress these violations. The same section of ERISA is a basis for necessary equitable relief to fully remedy each of these violations.

COUNT THREE

VIOLATION OF FEDERAL COMMON LAW UNDER ERISA

118. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 105. This Count is brought on behalf of all members of the AT&T Retiree Sub-Class against all defendants.

119. In addition to and as an alternative to the bases for liability presented in the foregoing Counts, plaintiffs claim that by virtue of written promises, defendant AT&T offered the Retiree Death Benefit, and each plaintiff and each Sub-Class member accepted this offer by

working faithfully until retirement with the requisite service, retiring under the Plan and beginning to draw their service pensions. This conduct by plaintiffs and the Sub-Class members resulted in the vesting of the Retiree Death Benefit, which thereafter became irrevocable. Lucent became bound to this promise both as a successor in interest and by virtue of the terms of the Employee Benefit Agreement.

120. Pursuant to the Employee Benefits Agreement, Lucent agreed to assume all liabilities of AT&T to plaintiffs and the AT&T Retiree Sub-Class, including the obligation to pay Retiree Death Benefits, and Lucent accepted assets from the AT&T pension trust on the condition that it pay these liabilities.

121. The Retiree Death Benefit is a contractual right under the plans which became irrevocable upon the retirement of each retiree plaintiff and each retiree Sub-Class member under ERISA and the federal common law.

122. Further, by purporting to amend the Plan to eliminate its obligation to pay the Retiree Death Benefits to plaintiffs and the members of the AT&T Retiree Sub-Class, Lucent violated its obligations under the Employee Benefits Agreement to pay all liabilities owed to plaintiffs and the members of the AT&T Retiree Sub-Class, which are enforceable under ERISA and the federal common law applicable thereto under 29 U.S.C. § 1132(a)(3).

123. The termination of the Retiree Death Benefit also is a violation of the terms of the Plan itself which is actionable under Section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). Plaintiffs Foss, Lucas, Berendt and Howard and the retiree members of the Sub-Class are entitled to a declaration of their right to future benefits under the Plan, and plaintiff Conder and the members of the Sub-Class who are qualified beneficiaries of Sub-Class members who died on or after February 1, 2003 are entitled to immediate payment of the Retiree Death Benefit.

Further, under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), plaintiffs and the members of the Sub-Class are entitled to declaratory, injunctive or other equitable relief necessary and appropriate to fully and effectively redress these violations.

COUNT FOUR

VIOLATION OF ERISA PROVISIONS PROHIBITING CUTBACK IN ACCRUED PENSION BENEFITS

124. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 105. This Count is brought on behalf on all members of the Class against defendants Lucent, the Committee, and the Plan, and against defendant AT&T for purposes of relief only.

125. In addition to and as an alternative to the bases for liability presented in the foregoing Counts, plaintiffs claim that the Retiree Death Benefit was an accrued, defined benefit pension benefit under the Plan that was protected against cutback by Section 204(g) of ERISA, 29 U.S.C. § 1054(g). The Retiree Death Benefit that was historically provided under both the AT&T Management Pension Plan and, until recently, under the Lucent Management Pension Plan/Retirement Income Plan, was an accrued pension benefit in which retirees had a non-forfeitable interest that could not be eliminated by amendment of the plan.

126. The Retiree Death Benefit was always paid out of plan assets, and the funding policy for both the AT&T Management Pension Plan and the Lucent Management Pension Plan/Retirement Income Plan included the Retiree Death Benefit as an element of the plan sponsor's pension liabilities that were subject to its funding obligations.

127. Both the AT&T Management Pension Plan and the Lucent Management Pension Plan/Retirement Income Plan treated the Retiree Death Benefit as an accrued pension benefit obligation, as evidenced by the Plan documents and instruments which govern the Plan and the

predecessor plans, including but not limited to the specific provision for the payment of Retiree Death Benefits out of plan assets upon termination of the plan.

128. The effect of the Retiree Death Benefit under the AT&T Management Pension Plan and the Lucent Management Pension Plan/Retirement Income Plan was to provide each qualified participant with a benefit in excess of the actuarial value of his or her normal pension commencing at age 65. Accordingly, the Retiree Death Benefit is a retirement-type subsidy, and at a minimum it is an accrued pension benefit protected against cutback by ERISA Section 204(g), 29 U.S.C. § 1054(g).

129. The Retiree Death Benefits of plaintiffs and the members of the Class are attributable to service prior to February 1, 2003.

130. By amending the Lucent Retirement Income Plan to eliminate the Retiree Death Benefit, Lucent violated ERISA Section 204(g), 29 U.S.C. § 1054(g). Plaintiffs and the members of the Class are entitled to a declaration of their right to future benefits under the Plan, and members of the Class who are qualified beneficiaries of Class members who died on or after February 1, 2003 are entitled to immediate payment of the Retiree Death Benefit. Further, under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), plaintiffs and the members of the Class are entitled to declaratory, injunctive or other equitable relief necessary and appropriate to fully and effectively redress these violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray as follows:

A. That the Court certify this action as a class action under Rules 23(b)(1)(B), 23(b)(2), or 23(b)(3) Fed. R. Civ. P., and appointing plaintiffs' counsel as counsel for the Class and Sub-Class;

B. That the Court declare, adjudge and decree that the Retiree Death Benefit is an irrevocable and vested benefit (or a benefit which is otherwise protected against reduction or termination) which all defendants, including the Plan, must continue to pay for the benefit of each plaintiff and Class member; that defendants (other than AT&T) violated the strict duties, responsibilities, and obligations imposed on them by ERISA, 29 U.S.C. § 1001 et seq., in acting to implement the amendment which purported to terminate the Retiree Death Benefit effective February 1, 2003, and committed an unlawful inurement of plan assets and a prohibited transaction; and that the amendment purporting to eliminate the Retiree Death Benefit is null and void and without legal effect;

C. That the Court enter an order reforming the Plan to strike the Plan Amendment, effective February 1, 2003, which purported to eliminate the Retiree Death Benefit;

D. That the Court order and enjoin all defendants to take all necessary to steps to ensure the timely payment of the correct amount of the Retiree Death Benefit, together with prejudgment and post-judgment interest thereon, to each plaintiff and Class member for whom a Retiree Death Benefit became (or will have become) payable between February 1, 2003 and the date of judgment by the Court, including all necessary steps to notify Class members who are currently entitled to payment of such benefits but who did not make a claim for benefits due to the illegal termination of the Retiree Death Benefit, and also order and enjoin all defendants to make full and timely payment of the Retiree Death Benefits which become payable thereafter;

E. That the Court enter such other injunctive relief as may be necessary to ensure that defendants' violations are remedied and that appropriate procedures are established to prevent any further acts purporting to reduce or eliminate the Retiree Death Benefit or any other benefit under the Plan which became vested under IRC Section 420 and the implementing plan

provisions by virtue of the transfers of excess pension assets which were made by Lucent beginning in 1999;

F. That the Court award plaintiffs and the members of the Class reasonable costs and expenses, pre- and post-judgment interest, and attorneys' fees; and

G. That the Court grant such other relief as may be just and proper.

Dated: November 10, 2005

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2005, I caused the foregoing Consolidated Amended Complaint to be served electronically through the Court's ECF system.

Kimberly Litman

Kimberly M. Litman